



Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert B. Corbin

February 9, 1982

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

INTERAGENCY

Mr. Fritz Fiedler
Arizona Department of Transportation
Right of Way
205 South 17th Ave.
Phoenix, Arizona 85007

Re: 182-016 (R81-149)

Dear Mr. Fiedler:

We are writing in response to your memorandum of October 13, 1981, in which you asked whether A.R.S. § 28-1865 requires that a public auction be held for any disposal of land that had been acquired for transportation purposes. Although we answered that question in Ariz.Atty.Gen.Op. 179-319, you apparently are asking again because that opinion conflicts with an October 27, 1975, letter on that subject to your office.

The 1975 letter stated that a public auction must be held in order to dispose of any transportation property. The 1979 opinion, relying on a textual analysis of A.R.S. § 28-1865, said that a literal reading of the statute requires only property acquired pursuant to A.R.S. § 28-1865.D to be disposed of by public auction.^{1/}

1. The pertinent part of A.R.S. § 28-1865 states:

A. The director, in the name of the state, may acquire, either in fee or a lesser estate or interest, real property which the director considers necessary for transportation purposes, by purchase, donation, dedication, exchange, condemnation or other lawful means with monies from the state highway fund or any other monies appropriated to the department. . . .

(Footnote continued on page 2.)

Mr. Fritz Fiedler
February 9, 1982
Page 2

Inasmuch as the law has not been amended since 1979, we see no reason to modify Ariz. Atty. Gen. Op. 179-319. We must presume that the Legislature intended to distinguish the requirements for disposition of property acquired under A.R.S. § 28-1865, subsection D, from property acquired under other statutory provisions. Moreover, as we noted in our 1979 opinion, the Director should hold a public auction, even if one is not required, if he deems an auction to be in the public interest. In any event, as we also noted, he may not sell the property for less than its fair market value.

If you want more certainty in this matter, however, you may wish to seek legislative clarification of the requirement for public auction.

Sincerely,



BOB CORBIN
Attorney General

BC:LPS:lm

1. (Footnote continued from page 1.)

D. The authority conferred by this section to acquire real property for transportation purposes includes authority to acquire for future needs provided the transportation board has an adopted and approved state route plan or airport site location for such transportation showing a reasonable need for such property. . . .

. . . .

G. The director may dispose of real property or any right, title or interest therein, when he determines that it is no longer needed or used for transportation purposes. The director may after the establishment, laying out or substantial completion of a transportation improvement, convey out any such real property or any interest therein which was acquired pursuant to subsection D of this section and which it determines is not necessary for such improvement. Such conveyance shall be made to the highest and most responsible bidder at a public sale held for that purpose. . . .